

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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NICOLE DUCHNIK, individually and  
on behalf of all others similarly  
situated,

Plaintiffs,

22-CV-399 (JLS) (HKS)

v.

TOPS MARKETS, LLC,

Defendant.

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### DECISION AND ORDER

Plaintiff Nicole Duchnik commenced an action in Supreme Court, Niagara County, on January 31, 2022 setting forth various claims against Defendant under federal and New York law. *See* Dkt. 1 at 11-24. Her claims are based on allegations that Defendant made false, deceptive, and misleading statements regarding its generic coffee product. *Id.* Defendant removed the action to this Court on May 26, 2022. *See id.* at 1-7.

On June 2, 2022, Defendant moved to dismiss the Complaint. Dkt. 3. This Court then referred the case to United States Magistrate Judge H. Kenneth Schroeder, Jr. for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 4. Plaintiff responded in opposition to Defendant's motion, arguing that "the Court should deny Defendant's Motion, or in the alternative grant leave to file an Amended Complaint." Dkt. 7. Defendant replied. Dkt. 10.


On July 6, 2023, Judge Schroeder issued a Report and Recommendation (“R&R”) recommending that this Court deny Defendant’s motion to dismiss Plaintiff’s claims under N.Y. Gen. Bus. L. §§ 349 and 350 but grant the motion as to all remaining claims. *See* Dkt. 12 at 33. He further recommended that this Court deny Plaintiff’s request for leave to amend the Complaint. *See id.* at 33. Neither party filed objections, and the time to do so has expired.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R and the relevant record. Based on that review, the Court accepts Judge Schroeder’s recommendation. As such, Plaintiff’s claims under N.Y. Gen. Bus. L. §§ 349 and 350 may proceed. All other claims are dismissed without leave to amend. The case is referred back to Judge Schroeder consistent with the June 3, 2022 referral order. *See* Dkt. 4.

SO ORDERED.

Dated: July 26, 2023  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE